

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

LOFTED COFFEE, LLC,

Plaintiff/  
Counterdefendant,

v.

LOFTY COFFEE, Inc.,

Defendant/  
Counterplaintiff.

Civil Action No. 1:16-cv-02146-RRM-CLP

**COUNTERPLAINTIFF'S REQUEST  
FOR CERTIFICATE OF DEFAULT**

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**TO: DOUGLAS C. PALMER, CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

Pursuant to Rule 55 of the Federal Rules of Civil Procedure, Defendant and Counterplaintiff Lofty Coffee, Inc. ("Lofty") hereby requests that default be entered against Plaintiff and Counterdefendant Lofted Coffee, LLC ("Lofted" or "Counterdefendant") in the above-captioned civil action for failure to plead or otherwise defend this action as fully appears from the court file herein and from the attached affirmation of Michael G. Sullivan.

On July 12, 2016, Lofty filed and served on Lofted its Answer and Counterclaims. Consequently, pursuant to FRCP 12(a)(1)(B), the deadline for Lofted to answer such counterclaims was August 2, 2016.

The time for Counterdefendant Lofted to answer the counterclaims has expired, and

Lofted failed to serve an answer before the deadline. Lofted also failed to file a request for an extension of time in compliance with either Fed. R. Civ. P. 6(b) or the INDIVIDUAL RULES OF JUDGE ROSLYNN R. MAUSKOPF, Rule II.E.

Although Lofted filed a request for a pre-motion conference under Rule III.A.2, such letter was not accompanied by a Rule II.E compliant request for extension of time as required by Rule III.A.3. *See* INDIVIDUAL RULES OF JUDGE ROSLYNN R. MAUSKOPF, RULES II. E., III.A.2, and III.A.3. According to Rule III.A.3, such a request is compulsory. (“[A] party *shall* simultaneously request an extension of its time to answer when a pre-motion conference is requested.” (emphasis added)). *Id.* at Rule III.A.3. Moreover, Lofted’s letter request for a pre-motion conference is unsupported in law and therefore cannot independently serve as good cause to enlarge the answer deadline under Fed. R. Civ. P. 6(b)(1)(A) (i.e., even if a motion compliant with Rule III.A.3 was filed).

THEREFORE, Counterplaintiff Lofted requests that the Clerk enter default upon the Counterdefendant Lofted in the above-captioned civil action and that a certificate of default be issued. A proposed Certificate of Default is submitted for the Court’s convenience.

Dated: October 18, 2016

Respectfully submitted,

/s/ Michael G. Sullivan

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*Attorneys for Defendant/Counterplaintiff Lofty Coffee, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, a true and correct copy of the COUNTERPLAINTIFF'S REQUEST FOR CERTIFICATE OF DEFAULT was filed via the Court's CM/ECF system, thereby effectuating service upon all counsel of record via electronic means.

Dated: October 18, 2016

/s/ Michael G. Sullivan

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**CERTIFICATE OF DEFAULT**

**CERTIFICATE OF DEFAULT**

I, Douglas C. Palmer, Clerk of the Court of the United States District Court for the Eastern District of New York, do hereby certify that Plaintiff and Counterdefendant Lofted Coffee, LLC has failed to respond to or answer the Counterclaims of Defendant and Counterplaintiff Lofty Coffee, Inc. A certificate of default is hereby entered against Counterdefendant Lofted Coffee, LLC, pursuant to Fed. R. Civ. P. 55(a).

Dated: \_\_\_\_\_

\_\_\_\_\_  
DOUGLAS C. PALMER  
CLERK OF THE COURT